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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 76

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, THE HONORABLE LLOYD SHORETT, JUDGE; AND TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 465, AND GEORGE LANCASTER, ITS SECRETARY-TREASURER, PETITIONERS

v.

THE STATE OF WASHINGTON ON THE RELATION OF YELLOW CAB SERVICE, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

OPINIONS BELOW

The findings of fact, conclusions of law, and oral opinions of the Superior Court for King County (R. 40–43) are unreported. The opinion of the Supreme Court of the State of Washington (R. 60–67) is reported at 153 Wash. Dec. 358, 333 P. 2d 924 (1959).

JURISDICTION

The judgment of the state Supreme Court was entered on February 10, 1959 (R. 68). The petition for

a writ of certiorari was filed on May 25, 1959, and was granted on June 29, 1959. The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Sec. 151, *et seq.*), are as follows:

DEFINITIONS

SEC. 2. When used in this Act—

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257) are as follows:

> SEC. 701. (a) Section 14 of the National Labor Relations Act, as amended, is amended by adding at the end thereof the following new subsection:
>
> "(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.
>
> "(c)(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction."

QUESTION PRESENTED

The interest of the National Labor Relations Board as *amicus curiae* is limited to a single question raised by petitioners, namely, whether the operations of respondent Yellow Cab system affect commerce within the meaning of Section 2(6) and (7) of the National

Labor Relations Act and hence fall within the statutory jurisdiction of the Board.

STATEMENT

1. *The business of the Seattle Yellow Cab system.*—Until 1955, the Yellow Cab Company, a partnership, operated a fleet of some 120 taxicabs in the city of Seattle, Washington (R. 9, 31, 61, 73–74). During 1955 and 1956, however, the Yellow Cab Company executed a plan of liquidation (a) by selling its "color rights," exclusive franchises and all its facilities and equipment other than taxicabs to Yellow Cab Service, Inc., and (b) by selling its taxicabs, subject to the terms of conditional sales contracts, to 118 corporations (R. 9, 18, 31, 50–51, 61, 73–74, 87–88, 118–119, 240–254). The Yellow Cab Company organized the Service Company to assure payment from the purchasing corporations and to service them (R. 17, 31–32, 41–42, 52, 61, 74–76).

The conditional sales contracts provided, *inter alia*, for the sale of four shares of Service Company stock to each purchaser of a taxicab and rendered the sale of the taxicabs and the stock subject to the terms of an agreement executed by the Yellow Cab Company, the Service Company and the purchasers (R. 9–10, 14–22, 23, 50–51, 74, 77–79). In accordance with the terms of this agreement, the board of directors of the Service Company, which is composed of three representatives of the Yellow Cab Company and two representatives of the purchasers, adopts rules and regulations to govern the conduct of the Yellow Cab business (R. 19, 32, 42, 54, 99–104,

133–136). The presidents of the purchasing corporations, who are known as owner-operators, also adopt rules for the conduct of the business, and they have elected a committee, two of the members of which are directors of the Service Company, to act for them between their meetings (R. 33, 53, 55, 62, 94, 97–98, 186, 198, 219–221, 256–258).

The 120 Yellow taxicabs, which have been licensed jointly in the names of the Service Company and the corporate purchaser involved, are driven by the owner-operators and by employee-drivers (R. 2, 53, 106, 173, 177–178, 218–219, 223). The personnel manager of the Service Company hires, discharges and disciplines the employee-drivers and arranges their work schedules (R. 33, 53, 62, 102, 105–106, 170–174).

The Service Company provides dispatching, "starter," advertising, bookkeeping and accounting services for the corporate purchasers (R. 2–3, 20, 29, 42, 52–53, 61, 88–91, 101–102, 178–179). All drivers turn in their gross receipts to the Service Company, which credits them to the account of the purchaser of the taxicab involved. From these funds the Service Company deducts and pays the wages of the employee-drivers and all other debts owed by each purchaser. The balance is paid weekly to the owner-operators (R. 32–33, 42, 53–54, 88–90, 181– 182, 184–185, 190–192, 219).

The Yellow Cab Company has assigned to the Service Company franchises which grant Yellow taxicabs the exclusive right to pick up passengers arriv-

ing at the Seattle railroad terminals, airports and steamship docks, all of which service interstate carriers of passengers and baggage. The franchise agreements also require the holder to provide a sufficient number of taxicabs to serve incoming passengers (R. 12, 25, 57, 61, 63–64, 81–86, 249–254). Pursuant to contracts with the railroads operating out of the two Seattle stations, Yellow cabs exclusively transfer "through-passengers" and baggage between the stations and the docks upon the presentation by the passengers of transfer coupons issued by the railroads (R. 41, 57, 61, 64, 80–82, 84–86, 240–248). In addition, Yellow cabs transport passengers to the railroad stations, airports and docks (R. 40–41, 57, 63–64, 83–84). The taxicabs do not operate across state lines (R. 63, 114).

During the fiscal year ending June 30, 1958, the gross receipts of the Yellow Cab system were $1,429,914.02. Of this amount, $156,062.40 was earned from picking up passengers arriving at the airports, $46,818.00 from transporting passengers to the airports, and $1,436.00 from transferring "through-passengers" and baggage between the railroad stations and the docks (R. 36–37, 40–41, 57, 63–64, 108–112, 258).

2. *The labor dispute giving rise to these proceedings.*—At the time of the formation of the Service Company by the Yellow Cab Company, the Taxicab Drivers and Chauffeurs Local Union No. 465 was the bargaining representative of the drivers and dispatchers, and a collective bargaining agreement was

in force. After the expiration of this contract in June 1956, representatives of the Service Company and the owner-operators negotiated with Local 465 an agreement covering the dispatchers and employee-drivers, which was signed by the Service Company and the corporate purchasers. This contract was terminated on March 26, 1958, effective June 1, 1958. Negotiations for a new contract were unsuccessful, and on September 16, 1958, the Local called a strike and began to picket the Yellow Cab garage and office (R. 3–4, 9–11, 23–24, 34, 42, 55–56, 58, 62, 76–78, 128–132, 134–135, 165–166, 198–200, 202–205, 223).

3. *Proceedings in the courts below.*—On September 23, 1958, the Service Company filed a complaint in the Superior Court for King County against the Local and the International Brotherhood of Teamsters. The complaint sought a permanent injunction restraining the Local and International from picketing the place of business of the Service Company on the grounds that (1) the picketing was unlawful since the Service Company was willing to sign a contract with the Local covering the dispatchers, and hence no labor dispute existed between the Company and the Local, and (2) the picketing was causing irreparable damage to the Company (R. 1–5). The answer of the Local alleged that the court had no jurisdiction over the suit inasmuch as the Service Company and the purchasing corporations constituted a single enterprise, which was engaged in an industry "affecting commerce" within the meaning of the National Labor Relations Act, and the strike and picket-

ing of the Local were protected activities within the meaning of the Act (R. 7–13).[1]

At the conclusion of a trial on the merits, the court ruled that the Seattle Yellow Cab system was a single integrated business, that the business "affected commerce," and that the case presented a labor dispute over which the National Labor Relations Board has exclusive jurisdiction (R. 40–43).

Upon an application by the Service Company for an alternative writ of mandate, the Supreme Court of Washington held that the National Labor Relations Board does not have jurisdiction over the operations of the respondent taxicab system (R. 60–67). Accepting, without deciding, the "union's hypothesis" that the Yellow Cab Service and operating corporations constituted a single entity, the court decided that (a) the system does not constitute "such an integral step in the interstate movement of passenger traffic as to be considered as being in interstate commerce" (R. 67), (b) even if the transportation of passengers from railroad stations to steamship docks be viewed to be in interstate commerce, it is of a *de minimis* character, and (c) "whatever unfair labor practices may be present in this case can [not] possibly be said to be 'burdening or obstructing commerce'" because "[t]here is no testimony in the record that this strike has impaired taxicab service to or from the railroad terminals, airports, and docks, and hence no evidence of any effect upon interstate commerce sufficient to justify application of the Na-

[1] The International was not served and did not appear.

tional Labor Relations Act" (R. 66). The writ of mandate was granted, and the trial court was directed to assume jurisdiction of the suit for injunctive relief (R. 67).

SUMMARY OF ARGUMENT

The decisions of this Court have made it abundantly clear that the statutory jurisdiction of the National Labor Relations Board extends to any enterprise, including intrastate enterprises, where a stoppage of business operations resulting from industrial strife would tend to impede or disrupt the free flow of interstate commerce in its normal channels. Judged by this test, the operations of the Seattle Yellow Cab system affect commerce and clearly fall within the coverage of the National Labor Relations Act. Transportation of "through-passengers" between the railroad stations and the docks by the Seattle Yellow cabs "is clearly a part of the stream of interstate commerce." *United States* v. *Yellow Cab Co.*, 332 U.S. 218, 228–229. Moreover, the transportation of incoming passengers from the railroad stations and airports, which under its franchises belongs exclusively to the Yellow Cab system, establishes it as an important, if not an indispensable, adjunct of interstate travel, and the transportation of passengers from various localities in the city to the railroad stations and airports greatly facilitates interstate travel. Even assuming that such service could not be viewed as "in interstate commerce," it directly "affects commerce" in a very real and practical sense.

It is well settled that local transit concerns are subject to the Board's jurisdiction since they provide an important mode of travel for employees of concerns engaged in commerce and any disruption of such transportation would tend to affect the interstate operations of the latter. By the same token, the Board's jurisdiction extends to the Yellow Cab system. Indeed, in view of the exclusive arrangements which exist between the system and the railroads and airports for transporting incoming passengers and "through-passengers," the impact on interstate commerce of a strike or work stoppage involving the system would perhaps be even more direct and immediate than in the case of a local transit company. Moreover, since such exclusive franchise arrangements are not uncommon in the taxicab transportation industry, the immediate situation "is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce." *Polish National Alliance* v. *National Labor Relations Board*, 322 U.S. 643, 648. "Congress * * * left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress." *Ibid.* Under its present jurisdictional standards, the Board exercises its statutory jurisdiction over taxicab enterprises similar to the Yellow Cab system. And Congress has recently, in effect, incorporated these standards into Section 14(c)(1) of the Act and thus not only implicitly confirmed the Board's statutory power over taxicab companies, but also expressly re-

quired the Board to assert jurisdiction over such enterprises as meet its current standards.

The court below, in resting its decision on the ground that the taxicab system is not engaged "in commerce," overlooks the fact that the coverage of the Act extends beyond activities "in commerce" and includes activities which "affect commerce." Similarly, the court below erred in giving weight to the fact that the labor dispute has not been shown to have disrupted service to and from the various terminals; "the Board's jurisdiction can attach, as here, before actual industrial strife materializes to obstruct that commerce." *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U.S. 318, 326. Finally, *United States* v. *Yellow Cab Co.*, 332 U.S. 218, on which the court below relied, affords no support for the court's ruling.

ARGUMENT

THE OPERATIONS OF THE SEATTLE YELLOW CAB SYSTEM "AFFECT COMMERCE" WITHIN THE MEANING OF SECTION 2(6) AND (7) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The provisions of the National Labor Relations Act and the principles which define and govern the scope of the statutory jurisdiction vested in the National Labor Relations Board are familiar to the Court and need be recapitulated here only briefly.

Section 10(a) of the Act empowers the Board to prevent unfair labor practices "affecting commerce." Section 2(7) defines the term "affecting commerce" to mean "in commerce, or burdening or obstructing

commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." It is settled that, in this Act, Congress "in order to protect interstate commerce from adverse effects of labor disputes has undertaken to regulate all conduct having such consequences that constitutionally it can regulate. * * * Congress * * * left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress." *Polish National Alliance* v. *National Labor Relations Board*, 322 U.S. 643, 647–648. Accordingly, the Board's jurisdiction extends to any enterprise, including intrastate enterprises, where a stoppage of business operations resulting from industrial strife would tend to impede or disrupt the free flow of interstate commerce in its normal channels. *Ibid.*; *National Labor Relations Board* v. *Jones & Laughlin*, 301 U.S. 1, 36; *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601, 607; *Santa Cruz Co.* v. *National Labor Relations Board*, 303 U.S. 453, 467; *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U.S. 318, 326; *National Labor Relations Board* v. *Denver Bldg. Council*, 341 U.S. 675, 684; cf. *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U.S. 219, 234, 236; *United States* v. *Women's Sportswear Association*, 336 U.S. 460, 464.

The trial court found, and the court below assumed, that the Service Company and the 118 purchasing corporations which comprise the Seattle Yellow Cab

system constitute and function as an integrated business enterprise. The record shows that the system is the holder of franchises which give its taxicabs the exclusive right to pick up passengers arriving at the railroad terminals, airports and steamship docks in the city of Seattle. Under contract with the railroads operating out of the two stations, Yellow cabs also exclusively transfer "through-passengers" and baggage where the railroad, as is often the case, has contracted with the passenger to supply between-station transportation. The gross receipts of the cab system exceeded one million dollars in the fiscal year ending in June 1958. Of this amount more than $200,000 was earned from transporting passengers to and from the airports and "through-passengers" between railroad stations and the docks. Although the record does not show the revenue earned by the system from the transportation of passengers to and from the railroad stations and the docks, it is a fair inference that the amount is substantial.

It is evident, we think, that the operations of the Yellow Cab system affect interstate commerce within the meaning of the Act. The transportation of "through-passengers" between the different railroad stations and the docks "is clearly a part of the stream of interstate commerce." *United States* v. *Yellow Cab Co.*, 332 U.S. 218, 228–229. If it were necessary to rely on this factor alone, it would suffice to bring the taxicab system within the coverage of the Act.[2] But

[2] The transportation of such "through-passengers" accounted for approximately $1500 of the system's revenues. The court below treated this as *de minimis* in character. But *de minimis*

there are additional and more substantial links between the taxicab system and the movement of passengers in commerce. The transportation of incoming passengers from the railroad stations and airports, which under its franchises belongs exclusively to the taxicab system, establishes it as an important, if not an indispensable, adjunct of interstate travel. Cf. *United States* v. *Capital Transit Co.*, 325 U.S. 357, reversed, 338 U.S. 286. And the transportation of passengers from various localities in the city to the railroad stations and airports greatly facilities interstate travel. It is common knowledge that in many metropolitan areas, like Seattle, thousands of travelers must and do depend upon and utilize taxicab service, such as the Yellow Cab system furnishes, to transport them and their baggage to and from and between railroad stations, airports, and, where there are navigation facilities, docks. One can readily visualize the hardships and inconvenience which interstate travelers would experience from a disruption of the taxicab service. Curtailment of the service would necessarily tend to cast a burden on interstate travel. Even assuming that such service could not be viewed as "in interstate commerce," in a very real and practical

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"in the law has always been taken to mean trifles—matters of a few dollars or less." *National Labor Relations Board* v. *Suburban Lumber Co.*, 121 F. 2d 829, 832 (C.A. 3), certiorari denied, 314 U.S. 693. Cf., also, *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 181 F. 2d 34, 36, 37, aff'd, 341 U.S. 694, where the Second Circuit, speaking through Judge Learned Hand, held that a labor dispute involving a New York contractor whose work on the construction of a particular house in Connecticut was valued at only $325, fell within the Board's statutory jurisdiction.

sense it directly "affects commerce."[3] *New York State Labor Relations Board* v. *Wags Transportation System,* 130 N.Y.S. 2d 731, 736 (Sup. Ct.), aff'd, 134 N.Y.S. 2d 603 (App. Div.).

The coverage of the Act is not, of course, limited to activities in "interstate commerce." It extends to operations which "affect commerce." The distinction, which the court below has overlooked, is important. "In so describing the range of its control, Congress is not indulging stylistic preferences; it is mediating between federal and state authorities and deciding what matters are to be taken over by the central Government and what to be left to the States * * *. And so in this Act, unlike some federal regulatory measures * * * Congress has explicitly regulated not merely transactions or goods in interstate commerce but activities which in isolation might be deemed to be merely local but in the interlacings of business across state lines adversely affect such commerce * * *. Congress therefore left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress." *Polish National Alliance* v. *National Labor Relations Board,* 322 U.S. 643, 647–648.

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[3] It may also be noted that taxicab systems often purchase vehicles and incidental supplies, such as tires, gas and oil, which come from out-of-state sources. See, *e.g., Cab Services, Inc.*, 123 NLRB No. 19. Any disruption of their operations by industrial strife would, of course, tend to have an effect on the interstate movement of such equipment and supplies, which undoubtedly are substantial in volume.

It is well settled that local transit concerns are subject to the Board's jurisdiction. The basis of the Board's jurisdiction over such enterprises is that a disruption of their services, as a result of labor strife, would seriously hinder and impede the operation of other businesses engaged in interstate commerce whose workers depend on the transit system's cars and buses for transportation. *Amalgamated Association of Street, Electric Railway, etc. Employees* v. *Wisconsin Employment Relations Board*, 340 U.S. 383; *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. 2d 51, 53–54 (C.A. 4), certiorari denied, 321 U.S. 795; *National Labor Relations Board* v. *Fort Worth Transit Co.*, 187 F. 2d 792 (C.A. 5); *National Labor Relations Board* v. *El Paso-Ysleta Bus Line, Inc.*, 190 F. 2d 261 (C.A. 5).

By the same token, the Board's jurisdiction extends to the taxicab system in the instant case. Indeed, in view of the exclusive arrangements which exist between the system and the railroads and airports for transporting incoming passengers and "through-passengers," the impact of a strike or work stoppage involving the cab system on interstate commerce would perhaps be even more direct and immediate than in the case of a local transit company. Moreover, it should be noted that the arrangements which exist here are not uncommon in the taxicab transportation system in the country.[4] The immediate situation "is representative of many others throughout the country, the total incidence of which if left

[4] *New York State Labor Relations Board* v. *Wags Transportation System*, 130 N.Y.S. 2d 731, 736 (Sup. Ct.), aff'd, 134 N.Y.S. 2d 603 (App. Div.).

unchecked may well become far-reaching in its harm to commerce." *Polish National Alliance, supra,* 322 U.S. at 647–648.

The Board presently exercises its statutory jurisdiction over taxicab enterprises similar to the Yellow Cab system. Although at times during its history the Board has refrained from asserting its statutory power over such enterprises, the abstention has been prompted by policy considerations rather than by any doubt of the existence of the power.[5] Power is not,

[5] The history of the Board's practice in this respect may be summarized as follows:

Prior to 1950, the Board exercised jurisdiction over taxicab companies which did some business across state lines. *Taxicabs of Cincinnati, Inc.*, 82 NLRB 664; *Yellow Cab Co.*, 88 NLRB 282; *Hickey Cab Co.*, 88 NLRB 327. During 1950, the Board declined to assert jurisdiction over particular taxicab companies operating within the confines of a single state, on the ground that their operations, while "not entirely unrelated to interstate commerce," were "essentially local in character," and it "would not effectuate the policies of the Act to assert jurisdiction" in the individual cases. *Yellow Cab Co.*, 90 NLRB 1884; *Skyview Transportation Co.*, 90 NLRB 1895; *Brooklyn Cab Corp.*, 90 NLRB 1898. However, before the end of 1950 the Board modified its position and began to exercise jurisdiction over local taxicab companies which serviced interstate passengers. *Red Cab, Inc.*, 92 NLRB 175. Noting that the taxicabs pursuant to exclusive franchises serviced terminals handling interstate traffic, the Board found that the operations of the cabs might properly be regarded as "an essential link" in the services performed by the interstate carriers. *Id.* at 177. See also *Skyview Transportation Co.*, 92 NLRB 1664, 1665; *Rite Rate Cab Co.*, 95 NLRB 1302, 1304–1305; *Cashman Auto Co. and Red Cab Co.*, 98 NLRB 832, 833, enforced, 200 F. 2d 412 (C.A. 1); *Charman Service Corp.*, 99 NLRB 534.

From 1952 to 1954, jurisdiction was asserted over local taxicab companies if the company involved (1) was either the sole concern in the area serving instrumentalities of commerce or was licensed by such an instrumentality and (2) derived a sub-

of course, extinguished by the mere failure to exercise it nor does the lack of consistency in the Board's policy argue against the existence of the power. *United States* v. *American Union Transport*, 327 U.S. 437, 454–455; *United States* v. *Morton Salt Co.*, 338 U.S. 632, 647–648; *Virginian Railway* v. *United States*, 272 U.S. 658, 665–666. Under its current jurisdictional standards, adopted in 1958, the Board asserts its statutory power over taxicab companies which either have a gross volume of business of $500,000 or more or derive $50,000 or more of their revenue from interstate operations or from services such as the Yellow Cab system renders under its exclusive franchises with the railroads and airports.[6] Under either test, the Board would assert jurisdiction over the Seattle Yellow Cab system. *Cab Services Inc.*, 123 NLRB No. 19.

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stantial part of its income from providing the service. *Cambridge Taxi Co.*, 101 NLRB 1328; *New Taxi Dispatch Corp.*, 101 NLRB 1327; *Taxi Transit Co.*, 102 NLRB 45; *Yellow Cab Co.*, 103 NLRB 394; *Checker Taxi Co.*, 107 NLRB 266. During the period from 1954 to 1958, the Board declined to exercise jurisdiction over any local taxicab companies. *Checker Cab Co.*, 110 NLRB 683; *Union Cab Co.*, 110 NLRB 1921. In 1958, the Board established its current standards under which jurisdiction is again asserted over local taxicab companies.

[6] The applicable Board standards were announced by the Board in a press release dated October 2, 1958, as follows (Press Release of National Labor Relation Board, No. 576, Oct. 2, 1958):

> 4. *Instrumentalities, links and channels of Interstate Commerce:* $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce.
>
> * * * * *
>
> 6. *Transit systems:* $250,000 gross volume.[2]
>
> [2] Except taxicabs, as to which the retail ($500,000 gross volume of business) test shall apply.

Congress has recently, in effect, incorporated these and other jurisdictional standards of the Board into the Act. Section 14 of the Act, as amended by Section 701(a) of the Labor-Management Reporting and Disclosure Act of 1959, which permits state authorities to assert jurisdiction over labor disputes over which the Board declines to assert jurisdiction, expressly provides that "the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959." The mandate which Congress has thus addressed to the Board not only implicitly confirms the Board's statutory power over such enterprises as taxicab companies but also requires its assertion over such enterprises as meet the current jurisdictional criteria.[7]

The decision below rests principally on three grounds: (a) the Yellow Cab system is not engaged "in commerce," (b) there is no showing that the labor dispute has impaired taxicab service to and from the railroad terminals, airports and docks, and (c) the decision of this Court in *United States* v. *Yellow Cab Co.*, 332 U.S. 218. The first of these grounds, as we have shown, overlooks the fact that the coverage of the statute extends beyond activities "in commerce" and includes activities which "affect commerce." Similarly, the court below is in error in giving weight to the circumstance that the labor dispute has not been shown to have disrupted trans-

[7] Explaining the amendment, Senator Kennedy stated "The Board can change its jurisdictional standards, and can, at any time, assume more jurisdiction; but it cannot assume less jurisdiction than it does today." 105 Cong. Rec. (Daily Ed.) 16417.

portation service to and from the various terminals. The absence of such a showing merely suggests, at best, that substitute facilities may have been brought into play. But it is well settled that this factor is immaterial for purposes of determining whether commerce has been affected within the meaning of the Act. Where the effect of a labor dispute would be an obstruction to commerce, the existence of alternative enterprises which might take over the halted operations is no bar to the Board's jurisdiction. For even though this effect might be dissipated by increased activity in competing enterprises, "the Board's jurisdiction can attach, as here, before actual industrial strife materializes to obstruct that commerce." *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U.S. 318, 326. See also *Virginian Railway Co.* v. *System Federation* No. 40, 300 U.S. 515, 557; *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U.S. 219, 236.

Finally, this Court's decision in *Yellow Cab, supra,* affords no support for the ruling below. Indeed, as we have already pointed out, *supra*, p. 13, the part of that decision (332 U.S. at pp. 228–229) dealing with the transportation of "through-passengers" supports the Board's jurisdiction in the instant case. The court below presumably relied on the views expressed by this Court in Part III of the opinion. There the Court concluded that "when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation.

And a restraint on or monopoly of that general local service, without more, is not proscribed by the Sherman Act." 332 U.S. at 233. The Court did not say that the activities of the local cab companies, particularly where, as here, they have exclusive franchises for transporting passengers from interstate terminals (332 U.S. at p. 231), could have no effect on commerce and thus were beyond Congressional power to regulate commerce. On the contrary, the Court expressly disclaimed a purpose "to establish any absolute rule that local taxicab service to and from railroad stations is completely beyond the reach of federal power or even beyond the scope of the Sherman Act. * * * A conspiracy to burden or eliminate transportation of passengers to and from a railroad station where interstate journeys begin and end might have sufficient effect upon interstate commerce to justify the imposition of the Sherman Act or other federal laws resting on the commerce power of Congress." (*Id.* at 232–233.) The decision of the Court rested on the proposition that since the complaint alleged no more than a conspiracy to monopolize a local business (*i.e.,* the casual transportation of passengers to and from railroad terminals), it failed to state a cause of action under the Sherman Act. That is, it was not enough for purposes of that statute to show that the taxicab companies had engaged in monopolistic practices or restraints as such; in addition, these practices or restraints had to be affirmatively related to some part of interstate commerce itself. Under the Labor Act, however, the jurisdictional test does not turn on the actually alleged and demon-

strated effects on commerce of the offending action but on the nature of the employer's business and the potential threat to interstate commerce in the event of a work stoppage.[8]

CONCLUSION

For the foregoing reasons it is concluded that the ruling of the court below that the National Labor Relations Board does not have jurisdiction over the Seattle Yellow Cab system is erroneous.

Respectfully submitted.

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[8] The court below also relied on *Mateo* v. *Auto Rental Co.*, 240 F. 2d 831 (C.A. 9), which dealt with the applicability of the Fair Labor Standards Act to airport limousine drivers. There is a serious doubt whether the *Mateo* decision is correct. Cf. *Airlines Transportation* v. *Tobin*, 198 F. 2d 249 (C.A. 4). But, in any event, as is apparent on the face of the Ninth Circuit's opinion, any reliance upon that case for purposes of the coverage of the National Labor Relations Act is misplaced. The coverage of the Fair Labor Standards Act, unlike the Labor Act, extends only to employees "engaged in commerce or in the production of goods for commerce" (52 Stat. 1062, 29 U.S.C., Sec. 206).

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